

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

WP(C).No. 23878 of 2006(P)  
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PETITIONER:  
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P.LALMOHAN, AGED 28 YEARS,  
S/O.LOHITAKSHAN, RESIDING AT NILAA,  
MEEPPAM ROAD, KARUVASSERI, CALICUT.

BY ADV. SRI.V.V.SURENDRAN  
SRI.P.A.HARISH

RESPONDENTS:  
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1. CHANARI JANU, D/O.MALUKUTTY,  
ELATHOOR AMSOM, PERUNTHURUTHI DESOM,  
KOZHIKODE.
2. CHANARI BHASKARAN, D/O.MALUKUTTY,  
KALAMKOTTYTHAZHAM, PUNCHIRI,  
KOTTOLI AMSOM DESOM, KOZHIKODE.
3. CHANARI SUKUMARAN,  
D/O.MALUKUTTY, MAKKADA AMSOM,  
MORIKKARA DESOM, KOZHIKODE.
4. CHANARI CHANDRAMATHI,  
D/O.MALUKUTTY, KUZHIKANDIYIL NELLIKODE AMSOM  
DESOM, KOZHIKODE.
5. CHANARI DEVI, W/O.KARUNAKARAN,  
MAKKADA AMSOM, KORIKKARA DESOM,  
KOZHIKODE.
6. RAMACHANDRAN, S/O.KARUNAKARAN,  
MAKKADA AMSOM, MORIKKARA DESOM, KOZHIKODE.
7. CHANARI MINI, D/O.KARUNAKARAN,  
MAKKADA AMSOM, MORIKKARA DESOM,  
KOZHIKODE.

- 8. CHANARI SUNIL KUMAR,  
S/O.KARUNAKARAN, MAKKADA AMSOM,  
MORIKKARA DESOM, KOZHIKODE.**
- 9. VYSHYAMPURATH SUKUMARAN,  
S/O.PERACHIKUTTY, PAYORAPOTTAMMEL,  
CHELAVOOR AMSOM DESOM, KOZHIKODE.**
- 10. VYSYAMPURATH BALAKRISHNAN,  
S/O.PERACHIKUTTY, CHELAVOOR AMSOM,  
MAYANAD DESOM, KOZHIKODE.**
- 11. EDATHIKANDIYIL SANTHA,  
D/O.MUTHORAN, KARUVISSERI AMSOM DESOM,  
KOZHIKODE.**
- 12. EDATHIKANDIYIL NANDINI, D/O.MUTHORAN,  
KARUVISSERI AMSOM DESOM,  
KOZHIKODE.**
- 13. EDATHIKANDIYIL VISWANATHAN,  
D/O.KUMARAN, KARUVISSERI AMSOM DESOM,  
KOZHIKODE.**
- 14. EDATHIKANDIYIL VISALAKSHI,  
D/O.KUMARAN, CHELAVOOR AMSOM, MAYANAD DESOM,  
KOZHIKODE.**
- 15. EDATHIKANDIYIL SAVITHRI,  
KAIPPRATH, MOKAVOOR AMSOM DESOM,  
KOZHIKODE.**
- 16. EDATHIKANDIYIL JAYANANDAN,  
KARUVISSERI AMSOM DESOM,  
KOZHIKODE.**
- 17. EDATHIKANDIYIL PUSHPA,  
NELLIKODE AMSOM DESOM,  
KOZHIKODE.**
- 18. EDATHIKANDIYIL KOMALAM,  
KARUVISSERI AMSOM DESOM,  
KOZHIKODE.**
- 19. EDATHIKANDIYIL PURUSHOTHAMAN,  
KARUVISSERI AMSOM DESOM,  
KOZHIKODE.**
- 20. EDATHIKANDIYIL MANOHARAN,  
KARUVISSERY AMSOM DESOM,  
KOZHIKODE.**

**21. EDATHIKANDIYIL GEETHA,  
KENARAKANDIYIL, PUTHIYANGADI AMSOM DESOM.**

**22. EDATHIKANDIYIL JANAKI,  
KARUVISSERI AMSOM DESOM,  
KOZHIKODE.**

**23. EDATHIKANDIYIL VIJAYAN,  
KARUVISSERI AMSOM DESOM,  
KOZHIKODE.**

**24. EDATHIKANDIYIL MURALI,  
KARUVISSERI AMSOM DESOM,  
KOZHIKODE.**

**25. EDATHIKANDIYIL SUBINA,  
KALATHUMKUNNU AMSOM DESOM,  
KOZHIKODE.**

**26. EDATHIKANDIYIL BHARATHI,  
KARUVISSERI AMSOM DESOM,  
KOZHIKODE.**

**27. EDATHIKANDIYIL CHITHRA,  
KARUVISSERI AMSOM DESOM,  
KOZHIKODE.**

**28. EDATHIKANDIYIL BINOY,  
KARUVISSERI AMSOM DESOM,  
KOZHIKODE.**

**BY ADV. SRI.MANJERI SUNDERRAJ --- R1 to R10  
SRI.B.PREMNATH (E)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 05/10/2007,THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

WP(C) NO: 23878/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE AFFIDAVIT FILED IN SUPPORT OF PETITION.

EXT.P2. COPY OF THE COUNTER STATEMENT FILED BY R1 TO R10.

EXT.P3. COPY OF THE COMMON ORDER OF THE SUB JUDGE DT. 7/7/06.

RESPONDENT'S EXHIBITS    NIL.

*True copy*

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M.N. KRISHNAN, J.

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W.P.C. NOs. 23878 &  
28670 OF 2006

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Dated this the 5<sup>th</sup> day of October, 2007.

J U D G M E N T

These two writ petitions are preferred against the order of the learned 3<sup>rd</sup> Addl. Subordinate Judge, Kozhikode in I.A.287/06 and I.A.1164/06 in a final decree application 2127/04 in O.S.615/95. The preliminary decree was passed by the Court below whereby the property was ordered to be divided into 18 equal shares and to allot 7 such shares to the plaintiffs 1 to 8, 7 such shares to plaintiffs 9 and 10, one share to the defendant No.10(to devolve on defendants 3 to 9), one share to defendants 1 and 2, one share to defendants 11 and 14 and one share to defendants 15 to 17. Total extent of the property involved is 27 cents and a perusal of the order would reveal that there are about three houses in the property. Petitioners who have come up before this Court are purchasers from the transferee and purchasers from the sharers and they want to step into the shoes of the

persons who are entitled to share in the preliminary decree and to prosecute the matter in accordance with law. Unfortunately, here the plaintiffs are having major shares of 14/18 and defendants described above having only 4/18 shares. The purchasers of the property are only persons who had purchased the property of rights of the defendants or in other words they are purchasers of a minority shares. The total extent of the property involved is only 27 cents and if partition is worked out, a sizable chunk has to be set apart to the share of the plaintiffs. But a perusal of the order passed by the Court below would reveal that the sharers had put the purchasers in possession of the two houses and so it is only just and reasonable and necessary that they are also heard otherwise at a later stage they will pretend ignorance and resist further proceedings after the passing of the final decree. Therefore, in order to make the things clear let the purchasers be impleaded as supplemental respondents in the final decree applications as prayed for by them. Let them be permitted to file their objections and the Court give appropriate directions to the Commissioner, if necessary, after hearing all parties to work out the modality of partition.

At the same time, I want to make it clear that the principles laid down in ***Kassingkunju v. Velayudhan Pillai (1972 KLT 861)*** that improvements made by one co-sharer on common property without authorisation from the other co-sharer, there cannot be any other privilege or right for the person who had made the improvements. Anything which is done and which will affect detrimentally the shares of others may have to be taken into consideration while deciding the matter. At the same time the Court shall also endeavor to do substantial justice to all parties within the four parameters of law and then dispose of the matter in accordance with law. Therefore, orders under challenge are set aside and the impleading petitions are allowed. The Court shall further proceed with the matter expeditiously so as to render a final decision in the matter.

The writ petition is disposed of accordingly.

**M.N. KRISHNAN, JUDGE.**